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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/768,623	01/25/2001	Paul Summer	198462US23	5737

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EXAMINER

LEVY, NEIL S

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 09/04/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

768623

Applicant(s)

SUMMER 2nd

Examiner

NSK/ley

Group Art Unit

16/6

11

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

☒ Responsive to communication(s) filed on 7/23/02

☐ This action is FINAL.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

☒ Claim(s) 1-57 is/are pending in the application.

Of the above claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-57 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____
 - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) 4047
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Office Action Summary

Receipt is acknowledged of Election of 7/23/02. The restriction requirement is withdrawn, as applicant asserts there has been no showing that the invention can be used for other purposes than claimed, and Patent Office has not the facilities to conduct showings to the contrary.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claims 1-57 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

"Condensed glutamic acid fermentation solubles", "yeast paste", "water absorbers" and "direct fed", and "mold inhibitors" and "fed microbials" are not sufficiently well known to be searchable. Please provide competent description of these compounds. Neither are "liquid feed products"—please identify in claim in order to distinctly claim the invention. These terms are not defined in the specification. The interaction capability (c) is not understood, as to intended limitation.

Claims 1-57 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to

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make and/or use the invention. It is unclear how the interaction capability (c) or the interaction occurs, and what weight is to be given this function. The means for providing the interaction are not evident. One in the art would not know how to provide the interaction. Selection of appropriate amounts of ingredients of a, b, c is not evident for one of ordinary skill in the art to determine, given the instant specification, with the aim of providing treatment or prevention of urinary calculi and milk fever, or of providing a feed. There is no direction given in the specification for identification of need for prevention, nor of the means for administering the product. No showing that the unspecified amounts in unspecified regimens would have any positive or negative effects on cows is evident to examiner.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

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Claims 1, 2, 4, 6-8, 10, 12-15, 17, 19-21, 23, 25-27, 29, 31-33, 35, 37 are rejected under 35 U.S.C. 102(b) as being anticipated by Vinci et al 5382678.

Liquid feed products—fatty acids, with an Earth (Ca, line 11, column 4) metal able to react with soluble phosphorus, the metal of the instant invention (column 2) and water, and phosphates (column 4, line 12) are mixed with cotton seed (column 4, line 52) and dried, the instant curing and coating to provide ruminant feed (column 2, top). Calcium oxide is used (A, column 5), as is Ca carbonate (column 4, lines 9-14) molasses (column 4, lines 26-68), vitamins, minerals, amino acids are added.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harris—5972414 in view of Hamada et al 3686392, Schroeder et al—4160041 and Vinci et al 5382678.

Harris coat cottonseed to provide ruminant feeds, by adjusting to acid pH (summary, column 2, 3), and using molasses (column 3, line 30) and additives; vitamins, minerals, fat (column 4, lines 10-14). The process provides for mixing with water and desired ingredients and drying—the instant curing (column 4). Calcium hydroxide is also used (Examples)—phosphoric acid was not specified.

Hamada uses the instant condensed glutamic acid fermentation solubles (column 1, lines 35-43) glutamic acid, for ruminant feed; with cotton seed, molasses, fat, mineral,

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vitamins, (column 2, top) and can be used in coatings, with water to provide feeds (column 2, lines 34-40).

Schroeder also provides coated ruminant feeds, with soluble phosphate, phosphoric acid (column 4), calcium oxide, aluminum oxide, fat and water (column 2). Molasses, whey are also used (column 3) and cotton seed (column 7, line 26).

Vinci, above, provides similar ruminant feeds, but does not specify phosphoric acid.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made, desiring to utilize ruminant feed compositions, to use one of those known in the art, as exemplified by the primary references, with selection of the equivalent ingredients: phosphoric acid, aluminum oxide, as shown by secondary references.

The amounts and proportions of each ingredient are result effective parameters chosen to obtain the desired effects. It would be obvious to vary the form of each ingredient to optimize the effect desired, depending upon the particular desired feed form and age, stage of limitation, health, feed availability and cost concerns. Applicant's methods are those of the prior art; mixing with water, heating, drying and feeding.

Applicant has not provided any objective evidence of criticality, non-obvious or unexpected results that the administration of the particular ingredients' or concentrations provides any greater or different level of prior art expectation as claimed, and the use of ingredient for the functionality for which they are known to be used is not a basis for patentability.

The instant invention provides well known old art recognized compounds, with well-known art recognized effects, applied by well known art-recognized methods.

Claims 1-4, 6-17, 19-29, 31-39, 41-49, 51-57 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-49, 51-57 of copending Application No. 09/950687. Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant application is obvious over 950687, as the claims are virtually anticipated, except for recitation of phosphoric acid.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

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Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is 308-2412. The examiner can normally be reached on Tuesday- Friday 7:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees can be reached on 308-4628. The fax phone numbers for the organization where this application or proceeding is assigned are 305-4556 for regular communications and 305-3592 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-1235.

Levy:mv
August 29, 2002

A handwritten signature in black ink, appearing to read 'Neil S. Levy', with a stylized, flowing script.

NEIL S. LEVY
PRIMARY EXAMINER